

Public Access to Court Records Handbook

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For more information, please consult the following website:
www.in.gov/judiciary/admin/accesshandbook.pdf

For answers to frequently asked questions about Administrative Rule 9, see:
<http://www.in.gov/judiciary/admin/accesshandbook-faq.pdf>

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Introduction to Public Access and Privacy Issues

Historically, court records in Indiana have been presumed to be open for public access, unless those records fell into certain exceptions that were deemed confidential. The philosophy of open records is that government and the public interest are better served when records are open for public inspection.

In addition to the inherent authority of the Indiana Supreme Court to oversee the operation of trial courts throughout the state, Indiana Code §5-14-3-4(a)(8) specifically recognizes the authority of the Indiana Supreme Court to promulgate rules governing access to court records. In accordance with this authority, Administrative Rule 9 was promulgated. Administrative Rule 9 expresses the general premise that records are publicly accessible unless they are explicitly excluded from access. This rule seeks to assure full public access to court records while protecting important privacy interests and while assisting court staff and clerks' offices in providing helpful customer service.

The Rule is the culmination of an intense ten-month effort of a special Task Force on Access to Court Records organized by the Supreme Court Records Management Committee in January 2003. The task force was chaired by Justice Brent Dickson of the Indiana Supreme Court and included a broad representation of numerous constituencies, including the media, victim advocacy groups, judges, private attorneys, clerks, the Indiana Attorney General's office, and the Indiana Civil Liberties Union. The Division of State Court Administration provided staff support to the task force, and the Division will ultimately assist courts and clerks' offices in the implementation of this rule.

The Rule, which was formally adopted by the Indiana Supreme Court on February 25, 2004, takes effect on January 1, 2005, at which time all new case filings and public access requests must comply with the Rule. Court and clerk offices need not redact protected information from, or restrict access to, documents or records created prior to January 1, 2005. Administrative Rule 9 governs confidentiality and access issues for both administrative and case records in all Indiana courts. Although this handbook attempts to answer some practical questions and situations users may encounter with Administrative Rule 9, it should be read in conjunction with the original text of the rule.

Questions pertaining to Administrative Rule 9, access or confidentiality may be directed to the Division of State Court Administration at (317) 232-2542. Individuals involved in the drafting of this Rule and handbook have included Ron Miller, John Newman, Tom Jones, and Lilia Judson. More information can also be found at the Division's website at <http://www.in.gov/judiciary>.

Who has access under this Rule?

The general presumption under this Rule is that all court records are open to any person, unless the records fall into a particular type or category that has been deemed to be excluded from public access by this Rule or unless they involve a particular individual circumstance that excludes them from public access.

Court staff and clerk staff, however, may at times have a greater level of access than would the general public. For example, juvenile records or adoption records that are not generally accessible by the public must be accessed by the court and clerk staffs who work with those records. By the same token, the parties themselves as well as their legal counsel may have access to records that are ordinarily excluded from general public access. Entities that assist courts in providing court services, and other governmental or public agencies may also at times have greater levels of access to certain records than would the general public. This might include providers of psychological or psychiatric services, GAL/CASA providers, social workers, or others.

At times, records that are otherwise excluded from public access may also need to be shared with other governmental agencies, such as law enforcement, administrative agencies, or schools. More particularly, specific data contained within records, such as Social Security Numbers or addresses, may need to be shared with these other governmental agencies to maximize the effectiveness of the court proceeding. Another instance of information sharing would include account numbers or Social Security Numbers that may need to be included in court orders submitted to banks or employers for garnishment purposes. Despite these particular instances when non-public information must be shared with other agencies or entities to give effect to court orders or other official proceedings, Administrative Rule 9 still requires that non-public information such as Social Security Numbers and account numbers, or in the instance of certain causes of action, dates of birth, address, and other identifying information be excluded from public access to the court file. In instances where a court order contains non-public information, the full order should be produced on green paper for inclusion in the non-public case file and a redacted copy made available for general public access.

Example:

An individual petitions a court for an order of protection. The court grants the petition and issues an order. As part of the order process, the court generates a protective order cover sheet, which contains the Social Security Number of all protected parties covered by the order. It also contains the date of birth of the petitioner. Social Security Numbers and dates of birth are excluded from public access; however, to maximize the effectiveness of the protective order, it is necessary to share this information with law enforcement agencies and other governmental agencies who may be involved in the protective order process. While the Social Security Number would not be available to the general public, law enforcement and other court agencies who help execute the order of protection fall within the scope of “other governmental agencies or agencies assisting the court. The court must ensure that the Social Security Numbers and

other information excluded from public access are not available in the public case file, and this in turn may result in the need for a redacted order in the public file and a complete order with all information in the confidential file.

Definitions

The Rule provides definitions to help clarify what is meant by particular sections of the rule. A brief synopsis of these terms is provided below.

Court Record. A court record is considered to include both case records and administrative records.

Case Record. Any document, information, data or other item created, collected, received or maintained by a court, court agency, or clerk of court in connection with a particular case. This category would likely include motions, pleadings, orders, evidence accepted by the court, etc.

Administrative Record. Any document, information, data or other item created, collected, received, or maintained by a court, court agency, or clerk of court pertaining to the administration of the judicial branch of government and not associated with any particular case. This category would likely include timesheets, phone records, memoranda, etc.

Court. When used in Administrative Rule 9, this term can refer to any court in Indiana, including the Indiana Supreme Court, the Court of Appeals, the Indiana Tax Court, circuit, superior, probate, county, city, town, and small claims courts. Staff of the court are included in this term.

Clerk of Court. When used in Administrative Rule 9, this term can refer to any clerk of court, including the Clerk of the Indiana Supreme Court, Court of Appeals and Tax Court, clerks of the circuit, superior, probate, and county courts; clerks of city and town courts; and clerks of small claims courts. Staff of the clerk's office are included in this term.

Public Access. This term means the process by which a person may inspect and copy the information in a court record.

Remote Access. This refers to the ability of a person to inspect and copy information in a court record in electronic form through an electronic means, such as a computer or the Internet.

In electronic form. This means any information in a court record in a form that is readable through the use of an electronic device, regardless of the manner in which it was created.

Bulk Distribution. This means the distribution of all, or a significant subset of the information in court records in electronic form, as is, and without modification or compilation.

Compiled Information. This means information that is derived from the selection, aggregation or reformulation of some of all or a subset of all the information from more than one individual court record in electronic form.

Providing Remote Access

One of the tremendous advances of modern technology provides courts and clerk's offices with the ability to provide public access to records through electronic means. Although Administrative Rule 9 does not require courts or clerks to provide electronic access to court records, it encourages them to provide remote access.

If remote access is provided, courts and clerks are encouraged to provide the following types of information:

- litigant / party indexes
- listings of new case filings, including party names
- chronological case summaries of cases
- calendars or dockets of court proceedings

In deciding to provide remote access to court records, courts and clerks should be mindful of restrictions on public access and also ensure that any remote access does not expose the court's case management system to unnecessary burden or risk of damage through inappropriate access, hacking, or viruses.

Remote access may increase efficiency in court and clerk offices because many routine questions or requests may be answered by public access to the information through remote means.

Courts and clerks who wish to provide remote access to court information must, pursuant to Trial Rule 77(K), submit a request to the Division of State Court Administration for approval of the form of access and the information to be included.

Administrative Rule 9 contemplates that courts and clerks may wish to post more information than basic indexes and CCS entries to a medium such as the Internet. With that intent in mind, the forms associated with this handbook provide a means for parties and their legal counsel to file information that is otherwise excluded from public access separate from documents, such as pleadings or motions, that may otherwise be available for public access. These companion forms would be kept separate from the publicly accessible portions of a case file in the physical file and would not be available to the general public in an electronic version.

Bulk Distribution and Compiled Information

A request for bulk distribution of records is one that asks for all records from a court's case management system. Under the terms of Administrative Rule 9, bulk record requests are ones that require no manipulation of the data. Rather, it is simply an output that contains all the records and all the data fields contained in those records. These types of requests are frequently made by commercial information providers or by entities conducting research.

Compiled information requests are ones that require some manipulation of data, either through filtering so that only particular records are included, or through editing or redaction of records to provide specific information.

All requests for bulk distribution or compiled information should be forwarded to the Division of State Court Administration. The new provisions of Administrative Rule 9 require that these requests be handled centrally so that they are dealt with in a similar fashion.

The Division of State Court Administration will review the bulk distribution or compiled information request, and if it is possible to accommodate the request the Division will either process the request directly through the Judicial Technology and Automation Committee ("JTAC"), or will forward the request to the appropriate jurisdiction for further action, if fulfilling the request could only be done by a local court or clerk's office.

Standard forms for bulk or compiled information requests may be found in Appendix A of this Handbook. While it is not necessary for a requestor to use the form, the form does call for all the information required by the Division to determine if a request could be fulfilled.

Requests for information that is otherwise publicly available will be granted if it is technically feasible and if resources to generate the information are available. Requests for information that is not publicly accessible require a higher level of scrutiny. The Division may still accommodate these types of requests, but information that is excluded from public access will still be limited.

In all instances the requesting party may be required to pay the reasonable costs of responding to the request for information.

Example:

A national criminal record database submits a request to the Division of State Court Administration for bulk transmission of all criminal records available through the statewide case management system. The Division reviews the request, notes that among the information requested are the Social Security Number of all defendants. Since Social Security Numbers are excluded from public access, the availability of that data will be limited. The Division processes the request, forwards it to JTAC for preparation of the data, and then ultimately transmits the data to the requestor. The data transmission will contain all of the

information requested, with the exception of the Social Security Number field, which will contain only the last four digits of the Social Security Number.

Local courts and clerks' offices may already be receiving requests for bulk or compiled information, and in some cases, may already be providing electronic transmission of information from an existing case management system. Following the effective date of this Rule on January 1, 2005, all such requests for either bulk or compiled data MUST be made to the Division of State Court Administration for further action, even if a court or clerk's office has previously provided data. As a practical matter, the Division may forward the request to the local court or clerk for further action, but in adopting the Rule, the Supreme Court felt that there was some utility and some economy in resources to centralize all requests for this sort of information. Bulk or compiled data requests should not be provided to any requestor until a request has been submitted to and approved by the Division of State Court Administration.

Records Excluded From Public Access

Certain records and data fields or information contained in records that are otherwise publicly accessible may be excluded from public access. Administrative Rule 9 first identifies numerous other confidentiality provisions from elsewhere in the Indiana Code and in the Indiana Rules of Court. These provisions are not new, but merely restatements of confidentiality found elsewhere. Administrative Rule 9 next creates new categories of confidentiality, and specifically excludes from public access certain information including, but not limited to, addresses, complete dates of birth, as well as information other than names which tends to identify witnesses and victims only in criminal, domestic violence, stalking, sexual assault, juvenile, or civil protection order proceedings. Complete Social Security Numbers and complete account numbers of specific assets, liabilities, accounts, and credit cards are always considered excluded from public access by this Rule.

Records that are excluded from public access or are otherwise declared confidential by federal or state law are incorporated into the restrictions of Administrative Rule 9. Some things that are excluded from public access include: certain adoption records, records relating to AIDS, records relating to child abuse that are not admitted into evidence, records relating to drug tests not admitted into evidence, records of grand jury proceedings, records of juvenile proceedings, certain paternity records, pre-sentence reports, and medical/mental health/tax records generally. Administrative Rule 9 specifically excludes the following records from public access:

- Information that is not publicly accessible under federal law;
- All adoption records created after July 8, 1941 [see I.C. 31-19-19-1], unless the records have specifically been declared open under I.C. 31-19-13-2(2);
- All records relating to Acquired Immune Deficiency Syndrome [see I.C. 16-41-8-1];
- All records relating to child abuse that have not been admitted into evidence during a public court proceeding [see I.C. 31-33-18];
- All records relating to drug tests that have not been admitted into evidence as part of a public proceeding pursuant to I.C. 5-14-3-4(a)(9);
- Records of grand jury proceedings [see I.C. 35-34-2-4];
- Records of juvenile proceedings pursuant to I.C. 31-39-1-2, except for certain cases and situations that are open by statute;
- All paternity records created after July 1, 1941 [see I.C. 31-14-11-15, I.C. 31-19-5-23, I.C. 31-29-1-1, and I.C. 31-29-1-2];
- All pre-sentence reports [see I.C. 35-38-1-13];
- Written petitions to permit marriages without consent and orders from the court directing the clerk to issue a marriage license to underage persons [see I.C. 31-11-1-6];
- Arrest warrants, search warrants, indictments and informations that the judge orders confidential prior to the return of service [see I.C. 5-14-3-4(b)(1)];
- All medical, mental health, or tax records unless: the records are released by the subject of those records, ordered open by a judge because the records are essential

to a pending case, or the records are considered open by law or regulation. [see I.C. 16-39-3-10, I.C. 6-4.1-5-10, I.C. 6-4.1-12-12, and I.C. 6-8.1-7-1];

- Personal information of jurors and prospective jurors, other than for use by parties or counsel to the parties in a particular case [see Jury Rule 10];
- Information relating to orders of protection that has not been admitted into evidence as part of a public proceeding [see I.C. 5-2-9-6];
- Mediation proceedings, mini-trial proceedings, and summary jury trials [see Alternative Dispute Resolution Rules 2.11, 4.4(c) and 5.6];
- Information in probation files pursuant to probation standards promulgated by the Judicial Conference of Indiana [see I.C. 11-13-1-8(b)];
- Information deemed confidential pursuant to the Rules for Court Administered Alcohol and Drug Programs promulgated by the Judicial Conference of Indiana [see I.C. 12-23-14-13];
- Information deemed confidential pursuant to the Drug Court Rules promulgated by the Judicial Conference of Indiana [see I.C. 12-23-14.5-9];
- Information that a judge has specifically ordered to be sealed or otherwise limited access;
- Social Security Numbers
- Addresses, phone numbers, dates of birth and other information specifically identifying witnesses or victims in criminal, domestic violence, stalking, sexual assault, juvenile, or civil protection order proceedings. This category does not include the name of the witness or the victim;
- Places of residence of judicial officers, clerks, and other employees of courts and clerks of court;
- Account numbers of specific assets, liabilities, accounts, credit cards, and personal identification numbers (PINS);
- All personal notes and e-mail, and deliberative material, of judges, jurors, court staff and judicial agencies, and information recorded in personal data assistants (PDA's) or organizers and personal calendars;
- All orders of expungement entered in criminal or juvenile proceedings;
- Work product of an attorney representing a public agency, the state, or an individual pursuant to I.C. 5-14-3-4(b)(2);
- Test questions, scoring keys, and other examination data used in administering a licensing examination or an examination given for employment pursuant to I.C. 5-14-3-4(b)(3);
- Test scores of a person if a person is identified by name and has not consented to the release of the person's scores pursuant I.C. 5-14-3-4(b)(4);
- Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature and that are communicated for the purpose of decision making [see I.C. 5-14-3-4(b)(6)];
- Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal [see I.C. 5-14-3-4(b)(7)];

- Personnel files of employees and files of applicants for employment, except for the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, and dates of first and last employment; information relating to the status of any formal charges against the employee; and information concerning disciplinary actions in which final action has been taken and that resulted in employee being suspended, demoted, or discharged [see I.C. 5-14-3-4(b)(8)];
- Administrative or technical information that would jeopardize a record keeping or security system [see I.C. 5-14-3-4(b)(10)];
- Computer programs, computer codes, computer filing systems and other software [see I.C. 5-14-3-4(b)(11)];
- Lists of employees of courts, court agencies, or clerks offices, which cannot be disclosed to commercial vendors for commercial purposes [see I.C. 5-14-3-4(c)(1)];
- All information and records obtained and maintained by the Board of Law Examiners [see Admission and Discipline Rule 19];
- Proceedings and papers in attorney discipline matters that relate to matters that have not yet resulted in the filing of a verified complaint [see Admission and Discipline Rule 23];
- Files, records and proceedings of the Continuing Legal Education Commission [see Admission and Discipline Rule 29];
- Information obtained or maintained by the Judges and Lawyers Assistance Program Committee, with the exception of statistical data [see Admission and Discipline Rule 31];
- Information maintained by the Judicial Qualifications Commission prior to the filing of a complaint and service of formal charges [see Admission and Discipline Rule 25].

Records Excluded from Public Access by Court Action

Administrative Rule 9 provides two methods for restricting access to otherwise accessible court records: (1) a petition filed by a person who would be affected by a release of the information and (2) an order to seal records entered pursuant to I.C. 5-14-3-5.5.

An individual who would be affected by the release of court records may file a petition with the court having jurisdiction or control of the record.

The petition must be verified and demonstrate that:

- (a) the public interest will be substantially served by prohibiting access;
- (b) access or dissemination of the information will create a significant risk of substantial harm to the requestor, other persons or the general public;
- (c) a substantial prejudicial effect to on-going proceedings cannot be avoided without prohibiting public access, or
- (d) the information should have been excluded from public access under section (G) of the rule.

Additionally, the petitioner must provide notice of the petition to the parties to the case as well as any other persons designated by the Court. Persons receiving notice are entitled to twenty (20) days after receipt of the notice to respond to the petition.

The petitioning person must provide the Court with proof that notice has been given or the reasons why notice could not be given or should not be given. In providing reasons why notice should not be given, the petitioning person must demonstrate to the Court their reasons for prohibiting access to the information.

Upon receipt of a petition to prohibit public access the Court may deny the petition without a hearing. Advance public notice must be posted with regard to a hearing upon a petition.

At the hearing, the petitioning person has the burden of proof by clear and convincing evidence. The petitioner must prove:

- (a) the public interest will be substantially served by prohibiting access;
- (b) access or dissemination of the information will create a significant risk of substantial harm to the requestor, other persons or the general public;
- (c) a substantial prejudicial effect to on-going proceedings cannot be avoided without prohibiting public access, or
- (d) the information should have been excluded from public access under section (G) of the rule.

In ruling upon a petition to exclude public access to court records, the Court is required to balance the public access interests served by Administrative Rule 9 and the grounds

demonstrated by the petitioner. The Court is required to state its reasons for granting or denying the petition and, if access is prohibited, use the least restrictive means and duration.

If a petition to prohibit public access is filed when a case is initiated, the petition and the case information will remain confidential for a reasonable period of time so that the Court may rule upon the petition.

If the information subject to the petition is already publicly accessible, the information may be rendered confidential for a reasonable period of time so that the Court may rule upon the petition.

Requests to access bulk or compiled records, or records under the jurisdiction of multiple courts, which records are normally excluded from public access, must be filed with the Supreme Court and are subject to the special requirements of Administrative Rule 9(F)(4).

Administrative Rule 9 does not limit the authority of a Court to seal court records pursuant to Ind. Code § 5-14-3-5.5. Proceedings to seal court records require a publicly noticed hearing in which parties or members of the general public must be permitted to testify and submit written briefs.

In ruling upon the sealing of the records the Court is required to make written findings of fact and conclusions of law showing that the remedial benefits to be gained by effectuating the public policy of the state declared in I.C. 5-14-3-1 are outweighed by proof by a preponderance of the evidence by the person seeking the sealing of the record that:

- (1) a public interest will be secured by sealing the record,
- (2) dissemination of the information contained in the record will create a serious and imminent danger to that public interest;
- (3) any prejudicial effect created by dissemination of the information cannot be avoided by any reasonable method other than sealing the record;
- (4) there is a substantial probability that sealing the record will be effective in protecting the public interest against the perceived danger; and
- (5) it is reasonably necessary for the record to remain sealed for a period of time.

All sealed records must be unsealed at the earliest possible time after the circumstances necessitating the sealing of the records end.

Obtaining Access to Information Excluded from Public Access

Administrative Rule 9(G)(3) provides that a Court with jurisdiction over a case may provide access to information in the case record that would otherwise be excluded from public access if the information is essential to resolution of the litigation or the information is released by each person to whom the information pertains.

Access to information in a case record or administrative record excluded from public access can also be sought under the provisions of Administrative Rule 9 (I). Any person may file a verified petition with the Court having jurisdiction of the record. The petition must demonstrate that:

- (a) extraordinary circumstances exist that requires deviation from the general provisions of this rule;
- (b) the public interest will be served by allowing access;
- (c) access or dissemination of the information creates no significant risk of substantial harm to any party, to third parties, or to the general public, and;
- (d) the release of information creates no prejudicial effect to on-going proceedings, or;
- (e) the information should not be excluded for public access under Section (G) of the rule.

Additionally, the petitioner must provide notice of the petition to the parties to the case as well as any other persons designated by the Court. Persons receiving notice are entitled to twenty (20) days after receipt of the notice to respond to the petition.

The petitioning person must provide the Court with proof that notice has been given or the reasons why notice could not be given or should not be given. In providing reasons why notice should not be given, the petitioning person must demonstrate to the Court their reasons for prohibiting access to the information.

Upon receipt of a petition to permit public access, the Court may deny the petition without a hearing. Should the Court hold a hearing to determine whether to permit access, the petitioner is required to demonstrate by clear and convincing evidence that:

- (a) extraordinary circumstances exist which requires deviation from the general provisions of this rule;
- (b) the public interest is served by allowing access;
- (c) access or dissemination of the information creates no significant risk of substantial harm to any party, to third parties, or to the general public, and;
- (d) the release of the information creates no prejudicial effect to on-going proceedings, or;

(e) the information should not be excluded from public access under section (G) of the rule.

In ruling upon a petition to permit access to court records that are not otherwise accessible, the Court is required to balance the public access interests served by Administrative Rule 9 and the grounds demonstrated by the petitioner. The Court is required to state its reasons for granting or denying the petition.

When a request is made for access to information excluded from public access, the information will remain confidential while the court rules on the request.

Restrictions may be placed upon the use or dissemination of the information to preserve confidentiality.

Contracts with Information Technology Vendors

Courts and clerks who are parties to agreements with information technology vendors, whether for case management systems, hardware or network support, or other computer services, and whether such agreements are with private contractors or consultants or another branch of state or county government, are required to abide by certain provisions in Administrative Rule 9 concerning the ownership and handling of court records.

First, any arrangement for information technology services that involves an entity outside the court or clerk's office, must explicitly require that entity to comply with all of the provisions of Administrative Rule 9. This requirement essentially requires the vendor to assume some responsibility for understanding the Rule and complying with it.

Second, each contract or arrangement with an information technology provider must require that the vendor assist the court in its role of educating litigants and the public about their ability to access information. Employees and sub-contractors of the vendor must also be trained by the vendor to understand this Rule and abide by its requirements.

Third, each contract must require vendors to obtain approval before providing any bulk or compiled records or other information transfers.

Finally, each contract or arrangement must contain language so that the vendor acknowledges that the records remain the property of the court and that the use of the information or the records is subject to orders of the court.

The provisions of this rule do not affect current contracts that are currently in force. However, as contracts are renegotiated, or renewed, they must be compliant with this provision. For long-term or on-going contracts that are already in place, a court or clerk may wish to see if the vendor will execute a contract addendum reflecting these provisions, or at a minimum, acknowledge these points in a letter to reflect their compliance.

Immunity for Accidental or Unintentional Disclosure

Administrative Rule 9 (L) provides immunity from liability to any court, court agency, or clerk of court employee, official, or an employee or officer of a contractor or subcontractor of a court, court agency, or clerk of court who unintentionally and unknowingly disclose confidential or erroneous information. The grant of immunity is consistent with the immunity and protections provided by Indiana statute as found at IC 5-14-3-10(c).

Specific Implementation Rules And Filing Procedures

Other Rules Implementing Administrative Rule 9

The Indiana Supreme Court has amended the rules set forth below to include provisions implementing Administrative Rule 9. Each of these amendments is effective January 1, 2005.

Rules of Trial Procedure

Trial Rule 3.1(D) Confidentiality of Information Excluded from Public Access. Any appearance form information or record defined as not accessible to the public pursuant to Administrative Rule 9(G)(1) shall be filed in a manner required by Trial Rule 5.

Trial Rule 5(G) Filing of Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative rule 9(G)(1). Every document prepared by a lawyer or party for filing in a case shall separately identify information excluded from public access pursuant to Administrative Rule 9(G)(1) as follows:

(1) Whole documents that are excluded from public access pursuant to Administrative Rule 9(G)(1) shall be tendered on light green paper, marked "Not for Public Access."

(2) When only a portion of a document contains information excluded from public access pursuant to Administrative Rule 9(G)(1), said information shall be omitted [or redacted] from the filed document and set forth on a separate accompanying document on light green paper conspicuously marked "Not For Public Access" and clearly designating [or identifying] the caption and number of the case and the document and location within the document to which the redacted material pertains.

(3) With respect to documents filed in electronic format, the trial court, by order or local rule, may provide for compliance with this rule in a manner that separates and protects access to information excluded from public access.

(4) This rule does not apply to a record sealed by the court pursuant to IC 5-14-3-5.5 or otherwise, nor to records to which public access is prohibited pursuant to Administrative Rule 9(H).

Trial Rule 58(C) Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G)(1). Every court that issues a judgment or order containing documents or information

excluded from public access pursuant to Administrative Rule 9(G)(1) shall comply with the provisions of Trial Rule 5(G).

Rules of Criminal Procedure

Criminal Rule 1.1 Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G)(1). Documents and information excluded from public access pursuant to Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G).

Rules for Small Claims

Small Claims Rule 2(E) Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G)(1). Documents and information excluded from public access pursuant to Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G).

Procedure for Post-Conviction Remedies

Post Conviction Rule 1, Section 3(c). The Clerk shall file documents and information excluded from public access pursuant to Administrative Rule 9(G)(1) in accordance with Trial Rule 5(G).

Tax Court Rules

Rule 3(G). Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G)(1). Documents and information excluded from public access pursuant to Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G).

Rules of Appellate Procedure

Appellate Procedure Rule 2(N). Case Record and Case Records Excluded From Public Access. The term “Case Record” shall mean a record defined by Administrative Rule 9(C)(2). “Case Records Excluded From Public Access” shall mean records identified in Administrative Rule 9(G)(1).

Appellate Procedure Rule 9(J). Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G)(1). Documents and information excluded from public access pursuant to Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G).

Procedure for Original Actions

Original Action Rule 3(J). Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G)(1). Documents and information excluded from public access pursuant to Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G).

Trial De Novo

Rule 4. Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G)(1). Documents and information excluded from public access pursuant to Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G).

Filing Procedures

Prior to its January 1, 2005 effective date, Courts and Clerks need to decide how Administrative Rule 9 will be implemented in their offices in compliance with the requirements of Trial Rule 5(G). Administrative Rule 9 does not prescribe a particular method to be used and has left implementation for local determination.

Decisions will need to be made about how confidential information will be received, entered, stored and made available for review or protected from review by unauthorized persons. Additionally, decisions will be needed concerning the handling of applications for access to confidential information and to prohibit access to information in a court record as both the applications and the information sought remain confidential pending a court ruling.

Each county will need to adopt a process for receipt of confidential information. Some of this information will be tendered upon the initial filing of a case, but some will be received during the pendency of the case. For ease of immediate identification Trial Rule 5 requires the use of a light green form by which a party may tender confidential or identifying information to the Clerk for entry into the case record. Examples of the types of confidential information which will be tendered are: Social Security Numbers, account numbers, and credit card numbers. In certain causes of action, such as protection orders, stalking, domestic violence, and criminal cases, addresses, dates of birth, and telephone numbers of witnesses and victims are also to be excluded from public access.

In order to secure compliance with the filing requirements of Trial Rule 5(G), Courts may want to adopt a Local Rule requiring certification of compliance by all parties and their counsel. A sample rule is contained in Appendix A.

Once received, confidential information must be secured within the system so that access is restricted to those entitled to view the information. Not only must the

information remain confidential but the document containing the information will have to be secured against inappropriate disclosure.

The storage of information related to a case will often be a combination of electronic as well as physical filing as opposed to all electronic or physical storage. Confidentiality will often pertain to multi-page documents, e.g. custody reports or evaluations or pre-sentence reports.

There are a variety of means that would be acceptable as a means to preserve confidentiality:

1. Partial account numbers and Social Security Numbers may be used, as well as year of birth, in place of the complete number or date. For example, a Social Security Number can be referenced as “xxx-xx-1234” rather than the complete number. To the extent that the full Social Security Number is needed by the court, that one piece of data can be filed on a separate green sheet and segregated from the rest of the public case file. The same would be true of account numbers (listed as “xxxx-xxxx-xxxx-9876” rather than having the full number) or dates of birth (listed as “1970” rather than month, day, and year).

2. If exhibits are filed with a pleading, as in a bank check for a proof of claim in a collections matter, the pleading can shield most of the account number, as demonstrated in #1 above, and the copy of the check can be placed in an envelope or otherwise segregated from the public case file to prevent disclosure of the account number.

3. Attorneys should be encouraged to file as much as possible for public access, and preferably have either a redacted duplicate copy of their complete filing so that the clerk’s office can have both a copy for the public case file as well as the complete filing. Another means of accomplishing this is to file only those elements of non-public data (such as Social Security Number, account numbers, etc.) on a separate green sheet, and use generic markers in the original pleading. In either of these instances, the clerk’s office must decide whether to keep non-public filings segregated completely from the public case file (essentially having two separate files) or whether to keep the non-public filings in an envelope or sub-folder with the public file.

4. Documents generated by the court, including orders, may contain confidential information. In these circumstances, care should be taken that the original order is placed in the confidential RJO and a redacted version is placed in the case file.

5. Where electronic storage of records is utilized, the court or clerk’s office must ensure that non-public data is not accessible at public walk-up terminals, or through any other form of remote access. This requirement will be applicable to any court that maintains traditional paper case files but creates its Chronological Case Summary (CCS), party information and/or Record of Judgments and Orders (RJO) electronically as well as to courts that maintain all of such information by electronic means only.

Petitions under Administrative Rule 9 (H) and (I) to exclude information from public access or obtain information previously excluded from public access are confidential from their filing (including the information itself) until the Court enters a

ruling upon the application. All documents and information related to these applications must be dealt with on a confidential basis and stored accordingly. Once a ruling has been entered on the application, the information will either be returned to public access or remain stored confidentially according to the duration of the order.

The procedures required by Trial Rule 5(G) do not apply to records sealed by court order pursuant to IC-5-14-3-5.5 or otherwise or to records to which public access is prohibited by Administrative Rule 9(H).

Protection Order Proceedings

Protection Order proceedings in all their variety involve the use of confidential forms for the collection and dissemination of that information to the Courts, Clerks, Prosecuting Attorneys and law enforcement officials. Each confidential form must be created on light green paper for appropriate handling within the Court system.

As noted in the Protection Order Deskbook many Clerks have written instructions given to parties who wish to petition for the issuance of a protective order before they begin to fill out the forms. These written instructions should be amended to address what information is confidential under the proceedings and how confidential information must be handled by the Courts.

Pro Se Litigation

Pro se litigants present a unique problem with regard to handling confidential information under Administrative Rule 9 due to their general lack of familiarity with the rules and procedures of the legal system. Clerks, as the initial recipients of the pleadings filed by unrepresented individuals, will need to carefully examine documents received to determine whether they contain information that should have been treated as confidential.

Many Courts provide forms for the use of pro se parties who want to file their own cases. This occurs most frequently in domestic relations cases or in small claims cases. Courts that provide forms for pro se parties should create Administrative Rule 9 compliant forms.

Handling Non-Compliant Filings

It is possible that pro se litigants or attorneys may file documents, pleadings, or exhibits with a court after January 1, 2005, that do not comply with the provisions of Administrative Rule 9. In most cases, it would be helpful to assist and educate litigants and attorneys on the changes required by this Rule; however, at times the filed document, pleading, or exhibit could be in serious violation of the provisions of the Rule. In these hopefully rare circumstances, the best practice would be to note the filing of the pleading on the Chronological Case Summary but impound it as a confidential document that would then be referred to the Court. The Court would then enter an order (see Appendix Form A-5) directed to the filing party to file an amended pleading which would comply with the rule within a limited period of time or suffer the striking of the pleading. During the period of time before the compliant pleading was filed the Court could extend the time for filing a responsive pleading.

Appendix A – Forms

Form A-1 Request for Bulk Data/Compiled Information

STATE OF INDIANA
IN THE _____ COURT
CASE NUMBER _____

REQUEST FOR RELEASE OF BULK DATA/COMPILED INFORMATION (NOT EXCLUDED FROM PUBLIC ACCESS)

To the Executive Director of State Court Administration:

Pursuant to Administrative Rule 9(F)(3) the release of bulk data/compiled information that does not contain information excluded from public access pursuant to Administrative Rule 9(G) or (H) is submitted:

Identity of Applicant: _____
Address _____
Telephone (____)-_____ Fax (____)-_____
E-Mail _____

Identification of Bulk Data/Compiled Information sought:
(specify and describe the records sought and the compiler or location)

Identification of Court(s) Exercising Jurisdiction Over the Records:
(List the Court(s))

Purpose for Request: Is release consistent with the purposes of Administrative Rule 9?
Are resources available to prepare the information? Is fulfilling the request an appropriate use of public resources?

(Set forth reason)

Applicant is (is not) willing to pay the reasonable cost of responding to the request. If not, why?

Date: _____

(Signature of Applicant)

(Printed Name)

Action by Executive Director of State Court Administration: Application referred to the _____ (Indiana Supreme) Court.

Date: _____

Division of State Court Administration

By _____

(Printed Name)

Court Action:

The Court finds the information sought is (is not) consistent with the purposes of Administrative Rule 9, resources are (are not) available to prepare the information and fulfilling the request is (is not) an appropriate use of public resources.

The request is:

granted. _____

granted contingent upon the applicant paying the reasonable costs of responding to the request. _____

denied. _____

Date: _____

_____ Court

By _____

(Printed Name)

Form A-2 Request for Bulk Data/Compiled Information Containing Information Excluded From Public Access

IN THE INDIANA SUPREME COURT
CASE NUMBER _____

VERIFIED REQUEST FOR RELEASE OF BULK DATA/COMPILED INFORMATION CONTAINING INFORMATION EXCLUDED FROM PUBLIC ACCESS

To the Executive Director of State Court Administration:

Pursuant to Administrative Rule 9(F)(4) the release of bulk data/compiled information containing information excluded from public access pursuant to Administrative Rule 9(G) or (H) is submitted:

Identity of Applicant: _____

Address _____

Telephone (____) - _____ Fax (____) - _____

E-Mail _____

Describe your interest in the records sought and the purpose of the inquiry:

Identification of Bulk Data/Compiled Information sought:

(specify and describe the records sought and the compiler or location)

Purpose for Request:

(describe the purpose for requesting the information and explain how the information will benefit the public interest or public education)

Security Provisions:

(explain provisions for the secure protection of any information requested to which public access is restricted or prohibited)

Notice to Affected Persons: Unless notice is waived by the Indiana Supreme Court, the following persons who will be affected by release of the requested information will be given notice of this Request and a reasonable opportunity to respond:

(List Names and Mailing Addresses of Affected Persons)

The public interest will be served by allowing access, denying access will create a serious and imminent danger to the public interest, or denying access will cause a substantial harm to a person or third parties because: (Set forth factual basis)

(I)(We) affirm under the penalties for perjury that the foregoing representations are true.

Date: _____

(Signature of Applicant)

(Printed Name)

Action by Executive Director of State Court Administration: Application referred to the Indiana Supreme Court this ____ day of _____, 20____.

Division of State Court Administration

By _____

(Printed Name)

Action by Indiana Supreme Court:

Notice to Affected Persons shall be provided: _____

Affected Persons shall have until _____ to file objections.

Notice to Affected Persons is waived: _____

Date: _____

Indiana Supreme Court

By _____

(Printed Name)

Form A-3 Bulk Access/Compiled Information Notice to Affected Persons

IN THE INDIANA SUPREME COURT
CASE NUMBER _____

NOTICE OF APPLICATION FOR RELEASE OF BULK DATA/COMPILED INFORMATION CONTAINING INFORMATION EXCLUDED FROM PUBLIC ACCESS

To: _____
(Name of Affected Person)

(Street Address)

(City, State & Zip Code)

Notice is hereby given that an application has been made to the Indiana Supreme Court for release of bulk data/compiled information containing information excluded from public access under Administrative Rule 9 (F)(4). A copy of the application is attached.

Written objections may (may not) be filed.

If objections have been permitted, the deadline for filing an objection with the Indiana Supreme Court is: _____. Objections may be filed with the Clerk of the Indiana Supreme Court, 217 State House, 200 West Washington Street, Indianapolis, IN 46204.

Date: _____

(Name of Applicant)

Form A-4 Clerk/Court Response Letter Regarding Non-Access

Dear (insert name of applicant)

We have received your recent request to obtain court records. We regret to advise you that the records you have sought cannot be provided due to the application of Administrative Rule 9 of the Indiana Supreme Court. Specifically, your request is excluded from public access by section 9 (G)/(H).

If you desire to pursue access to these records, you may seek:

- a. an order under section G (3) from the court having jurisdiction of the case declaring the information accessible because it is essential to the resolution of litigation,
- b. a release of the information from each person to whom the sought information pertains under section G (3) or
- c. an order for release by filing a verified request to obtain access under section I.

If you are successful in obtaining an order or release, you will be provided the information sought upon production of the order or release.

Yours truly,

(Name)
(Title)

Form A-5 Order to Comply with Administrative Rule 9

Order to Comply with Administrative Rule 9 or Suffer Sanctions

The Court has received a pleading filed by (Insert Name of Party) denominated as (Insert Title of Pleading) which has been filed but impounded because it does not comply with the requirements of Administrative Rule 9 of the Indiana Supreme Court.

It is Ordered that (Insert Name of Party) shall file an amended pleading that fully complies with Administrative Rule 9 within (Insert Number) days/on or before (Insert Date). Failure to comply will result in the striking of the pleading from the record. Pending the filing of the amended pleading the time for the filing of responsive pleadings shall be extended for an equal period of time.

The Clerk shall serve a copy of the within order and the impounded pleading upon (Insert Name of Party) or their attorney of record by certified mail and shall serve a copy of this order only upon all other parties of record.

Date: _____

Judge, (Insert Court Name)

Form A-6 Local Rule Certifying Compliance with Trial Rule 5 (G)

Local Rule [Insert Number per TR 81(E)]

Certification of Compliance of Pleadings With Trial Rule 5 (G)

All pleadings filed by a party shall contain a verification certifying that the pleading complies with the filing requirements of Trial Rule 5 (G) applicable to information excluded from the public record under Administrative Rule 9 (G).

A certification in substantially the following language shall be sufficient:

I/We hereby certify that the foregoing document complies with the requirements of Trial Rule 5 (G) with regard to information excluded from the public record under Administrative Rule 9 (G).

(Signed by party or counsel of record)

Appendix B – Clerk FAQ's

Q1. How do we handle a pleading that contains confidential information that is not placed on light green paper?

- A. Hopefully, through education and some assistance early on, attorneys and litigants will file their pleadings and cases properly. If something is offered for filing that seriously violates Administrative Rule 9, the best practice would be to file the pleading and note the filing in the Chronological Case Summary but impound it as a confidential document which would be referred to the Court. The Court would then enter an order (see Appendix Form A-5) directed to the filing party to file an amended pleading which would comply with the rule within a limited period of time or suffer the striking of the pleading. Pending the expiration of the time given to file the amended pleading the Court could extend the time for filing a responsive pleading.

Q2. Must information that was otherwise publicly available before January 1, 2005, be redacted after January 1, 2005.

- A. Administrative Rule 9 places no requirements on the Clerk's office to redact information in court records that was publicly available prior to January 1, 2005. Further, the intent of the rule is that parties filing documents will comply with the basic confidentiality requirements of the rule and place information that the court may need, such as Social Security Numbers and account numbers on a confidential filing form that can then be segregated from other publicly available materials in a case file.

Care should be given so that information that was public when entered into the record but that would be confidential upon implementation of the rule should not be given wider dissemination; e.g. posting on a website.

Q3. How fast must a clerk or a court provide requested information?

- A. Courts and clerks should endeavor to provide information as promptly as possible. With very few exceptions, Administrative Rule 9 does not set time limits for providing information or replying to requests for information. The Indiana Public Record law, although not directly applicable to Administrative Rule 9, establishes a timeframe of seven days to respond to requests for public records from governmental agencies or entities. The response period may be observed by actually producing the requested records or by advising the applicant that records will or will not be produced.

Q4. Can we charge a fee for the time involved in responding to a request for information?

- A. A court or clerk may charge for actual time and materials expended in responding to a request. These charges may include a reasonable charge for photographic copies, tape recordings, etc.

Charges by Clerks must comply with IC-5-14-3-8 regarding copies from public agencies (counties). The statute specifically exempts from its coverage the judicial department of government. Courts should adopt fee structure substantially in conformance with those authorized by existing statutes.

Q5. Must a clerk or court employee monitor a person examining a record?

- A. Changes to Administrative Rule 9 have not changed any requirements relating to procedures that a court or clerk office follows in allowing individuals to examine court documents or files. Court and clerk offices are already responsible to ensure that the court files are not damaged or altered in any way. Confidential material included in the file but maintained in a sealed envelope, or included in the file on confidential filing forms should be removed by a clerk or court employee prior to providing a file for examination. Clerk and court offices are encouraged to control the examination of original court files in such a way as to prevent damage or unauthorized modification of changes to the court records.

Q6. Must we provide a place for the public to review records?

- A. Administrative Rule 9 does not make any requirements that space be given to the public to review records. As a practical matter, it is advantageous to provide some space or public terminals for public examination of records so that clerk or court employees may monitor this activity and ensure that records are neither destroyed nor modified.

Q7. Are records that were public and in existence prior to Administrative Rule 9 now confidential?

- A. No. Records which were filed or created prior to January 1, 2005, that were open to public access when they were filed or created are public, whether they contain information that is now excluded from public access, such as Social Security Numbers or account numbers. Records that were confidential before January 1, 2005, remain confidential.

Q8. If requested, do we have to provide a list of cases with case numbers filed each day? Judgments entered – civil, criminal?

- A. The index of case filings except for case types that are confidential is considered a public record under Administrative Rule 9, and would be a record that could be requested and

should be provided by the court or the clerk's office, or made available for public inspection during normal office hours or on the Internet. Similarly, civil judgments and criminal judgments that are recorded in the Judgment Book are public records that should be provided by the clerk's office or made available for public inspection.

Since civil and criminal judgment records do not exist separately from each other, a court or clerk would not be required to create a list of civil or criminal judgments entered per day for production or public view. However, the judgments entered in individual cases are public records available for viewing or production upon request.

Q9. Which adoption records are confidential?

- A. Records of adoptions did not become confidential until 8 July 1941 when Acts 1941, Chapter 146, Section 6 became effective. Legislation concerning adoptions enacted before 1941 focused on the issue of providing legal proof of heirship so that the adopted child became an heir at law of the adoptive parents. The intent of the pre-1941 legislation was to make the adoption a public matter. All adoptions that took place before 8 July 1941 were recorded in the civil or probate order books.

Records of adoptions that took place before 8 July 1941 are not confidential either by statute or under Administrative Rule 9 and should be open to public access.

All records about adoptions taking place after 8 July 1941 are confidential. Chronological Case Summaries, all orders and judgments, the case file, and index entries concerning an adoption should be kept confidential. Judgments and orders concerning an adoption should be placed in the Confidential Record of Judgments and Orders.

Q10. In cases involving child abuse, what is considered confidential and what would be open to public access?

- A. According to statutory law and to Administrative Rule 9, the records concerning child abuse that must be kept confidential are the reports and other information found in the case files submitted to the courts by the Division of Family and Children including its county offices that contain local child protection services. Chronological Case Summary entries, as prescribed in Trial Rule 77(B), and entries in the Record of Judgments and Orders, as prescribed by Trial Rule 77(C), are open to public access.

Q11. Do Juvenile CHINS (JC) cases fall under the child abuse category of confidential records?

- A. No, but the cases are confidential anyway. Cases that generally fall into the child abuse category are adult criminal cases and some civil matters.

Q12. What if child abuse allegations become part of a divorce case? How should they be handled in the context of divorce proceedings?

- A. It is recognized in Administrative Rule 9 that there are situations when a matter deemed confidential by statute will be an issue for public resolution within the context of a judicial proceeding. The language in the rule stating, *"not admitted into evidence as a part of a public proceeding"* is intended to recognize these circumstances. Although child abuse matters are deemed confidential, such matters also could be the issue in a contested domestic relations case in which a party has the right to a public proceeding. Under Administrative Rule 9, the public proceeding prevails and the allegations are considered public unless the court makes an individual ruling on the matter and excludes the information from public access under subsection (H) or seals the records pursuant to IC-5-14-3-5.5.

Q13. What is open to the public in juvenile delinquency cases and what is confidential?

- A. Administrative Rule 9 permits the disclosure of those juvenile records specifically deemed open under statute. The statutes involved are found in IC 31-39-2, which is entitled *"Persons Entitled to Access to Juvenile Court Records."* For example, IC 31-39-2-8 discusses public access to records of juvenile delinquency proceedings. Under subsection (a) juvenile records are available to the public *"whenever a petition has been filed alleging that a child is delinquent as the result of any of the following alleged acts or combination of alleged acts:*

- (1) An act that would be murder or a felony if committed by an adult.*
- (2) An aggregate of two (2) unrelated acts that would be misdemeanors if committed by an adult, if the child was at least twelve (12) years of age when the acts were committed.*
- (3) An aggregate of five (5) unrelated acts that would be misdemeanors if committed by an adult, if the child was less than twelve (12) years of age when the acts were committed."*

However, under subsection (b) only certain information and records may be made available to the public even in the three situations discussed above. *Only* the following information may be released to the public:

- (1) child's name;*
- (2) child's age;*
- (3) nature of the offense;*
- (4) chronological case summaries;*
- (5) index entries;*
- (6) summons;*
- (7) warrants;*
- (8) petitions;*

(9) orders;

(10) motions ("excluding motions concerning psychological evaluations and motions concerning child abuse and neglect"); and

(11) decrees;

Also, if the child has been adjudicated as a delinquent child for an act or combination of acts as outlined above in IC 31-39-2-8 (a), then the child's photograph also may be released.

It is the duty of the clerk to keep all other records confidential of the child alleged to be or adjudicated as a delinquent child. Most of the confidential records are known as the "social" as opposed to the "legal" records of the juvenile court, and "social" records include, among other things, such items as evaluations from probation officers, case workers, physicians, guardians ad litem, school guidance counselors, and psychologists. The statutory language includes the following instructions to the clerk: *"The clerk of the juvenile court shall place all other records (excluding the eleven "legal" records listed above) of the child alleged to be or adjudicated as a delinquent child in an envelope marked "confidential" inside the court's file pertaining to the child."* The confidential information in the envelope may only be released to those authorized to receive such information. In addition, *"the identifying information of any child who is a victim or a witness shall remain confidential."*

Also, IC 31-39-2-10 allows a permissive disclosure of "legal records" if such release best serves the *"interests of the safety and welfare of the community."* When exercising this discretion, the court *"shall consider that the best interests of the safety and welfare of the community are generally served by the public's ability to obtain information about:*

(1) *the alleged commission of an act that would be murder or a felony if committed by an adult; or*

(2) *the alleged commission of an act that would be part of a pattern of less serious offenses."*

Q14. In cases where civil judgments occur as a result of a juvenile delinquency case, should the child's name be placed in the Judgment Docket?

A. In situations where civil judgments arise from juvenile cases, the juvenile's name should not be placed in the Judgment Docket unless the clerk is ordered to do so by the presiding judge in the case or unless the court or courts in that particular county have a local rule stating that the clerk should place all civil judgments arising from juvenile delinquency cases in the Judgment Docket.

Q15. Are paternity cases confidential?

A. Paternity records became confidential on July 1, 1941. Before 1941, paternity matters were handled as bastardy proceedings, and the records generated by these proceedings were not and are not confidential. All records concerning paternity cases filed on or after July 1, 1941, are confidential.

Q16. In situations where civil judgments occur as a result of a paternity case, should the names of the parties be placed in the Judgment Docket?

- A. In situations where civil judgments arise from paternity cases, the general rule is that the names of the parties should not be placed in the Judgment Docket unless the clerk is ordered to do so by the presiding judge in the case or unless the court or courts in that particular county have a local rule stating that the clerk should place all civil judgments arising from paternity cases in the Judgment Docket.

Q17. How are pre-sentence reports handled with the general court file?

- A. By statute (see IC 35-38-1-12 and IC 35-38-1-13) and Administrative Rule 9, pre-sentence reports are confidential. The reports should be produced on light green paper.

The best practice would be to file these reports separately from the case file. If the pre-sentence reports are placed in the case file, then procedures such as placing the pre-sentence report in a sealed evidence envelope should be used.

Q18. Are victims of crimes allowed to view pre-sentence reports and provide input to them?

- A. In 1999, the General Assembly enacted legislation to give victims of crimes certain rights. One of these rights was to have greater input into the sentencing process including “the right to make a written or oral statement for use in the preparation of the pre-sentence report” [see IC 35-40-5-6(a)]. In addition, notwithstanding the confidentiality requirements of IC 35-38-1-13, “*the victim has the right to read pre-sentence reports relating to the crime committed against the victim*” with certain exceptions. Victims still may be restricted from seeing the following information included in the pre-sentence report [see IC 35-40-5-6(b)]

- “*The source of the confidential information.*”
- “*Information about another victim.*”
- “*Other information determined confidential or privileged by the judge in a proceeding.*”

Under IC 35-40-6-7(5), the prosecuting attorney has the duty of notifying the victim of “*the victim’s right to review the pre-sentence report, except those parts excised or made confidential by*” IC 35-40-5-7.

Q19. What is open to public access and what is confidential in underage marriage petition cases?

- A. Pursuant to statute and Administrative Rule 9, underage marriage petitions and the orders resulting from these petitions are confidential. IC 31-11-1-6(c) states, “*A court’s authorization granted under subsection (a) [subsection (a) refers to the granting of an underage marriage license by the court] constitutes part of the confidential files of the clerk of the circuit court and may be inspected only by written permission of a circuit, superior, or juvenile court.*” Such orders are excellent candidates for inclusion in the

Confidential Records of Judgments and Orders. Case files, Chronological Case Summaries, and court orders concerning underage marriage petitions and orders should be kept confidential. Ironically, the marriage license records created because of the court order are public records.

Q20. What case type designation under Administrative Rule 8 should be used with underage marriage petition cases?

- A. The *Civil Miscellaneous* (MI) case type designation should be used. Some clerks and courts have been using the *Juvenile Miscellaneous* (JM) case type designation in underage marriage petition cases rather than the *Civil Miscellaneous* (MI) case type designation. The use of the *Juvenile Miscellaneous* (JM) case type designation for underage marriage petition cases is incorrect. As stated in IC 31-11-1-6(b), "*a circuit or superior court*" may receive a petition and make an order authorizing the clerk of the circuit court to issue a marriage license to the underage petitioner(s). Only a juvenile court, or a court with juvenile jurisdiction, may handle a *Juvenile Miscellaneous* (JM) case while all circuit and superior courts may handle a *Civil Miscellaneous* (MI) case.

Q21. When do arrest warrants, search warrants, and indictments or informations become open to public access?

- A. Administrative Rule 9 has attempted to incorporate the practice of many courts concerning arrest warrants, search warrants, and indictments and informations. Warrants and indictments need to be kept confidential if they are going to accomplish their intended purpose. However, once they have been served and the clerk has knowledge of service, then there is no longer a need for confidentiality. Administrative Rule 9 makes arrest warrants, search warrants, and indictments and informations confidential, if ordered by the court, until the return of duly executed service. To the extent that any of these documents contains complete Social Security Numbers or account numbers, provisions must be made to ensure compliance with the non-public nature of that information, such as filing the warrant, indictment or information on green paper.

Q22. What is confidential and what is open to public access in mental health cases?

- A. The main intention of Administrative Rule 9 in dealing with mental health cases is to protect the personal medical records of the person facing a mental health hearing. To be in compliance with state law and Administrative Rule 9, the medical records must be kept confidential.

One area of confusion that has developed concerning mental health cases is how the name of the person involved in a mental health hearing should be entered in the appropriate records. The name of the person involved should be listed on the Chronological Case Summary, and this record would be open to public access.

Because court orders resulting from a mental health hearing contain confidential medical information, orders in mental health cases should be placed in the Confidential Record of Judgments and Orders.

Q23. Since several of the inheritance tax forms are confidential, what are some filing strategies when dealing with inheritance forms within an estate case?

- A. Several filing strategies exist on how to manage inheritance tax records, and one of these is to set up a dual filing system for estate case files with the open records being placed in one file and the confidential records being kept in the other. A second strategy would be to place the confidential inheritance records in a separate file drawer with the case number placed on the forms. A third strategy would be to place the confidential inheritance tax forms in a sealed envelope and place them in the estate case file.

Q24. What information concerning jury lists is open to the public?

- A. Jury lists were included in Administrative Rule 9 to prevent problems such as the harassment of jurors. Some personal information may be disclosed in the jury selection process, and this information will become part of the public record. However, there is no requirement that addresses, telephone numbers, and other matters of a personal nature be published in the Record of Judgments and Orders. Pursuant to IC 33-4-5-9(b) and IC 33-4-5.5-7, the jury lists (names only) will be placed in the Record of Judgments and Orders that are open to the public.

Q25. How should orders of expungement be handled?

- A. Orders of expungement are confidential, and they should be placed in the Confidential Record of Judgments and Orders. It will be necessary for judges to state very clearly in the order whether the records to be expunged are only records dealing with the arrest or whether the court records concerning the case are to be expunged as well. If the court records are ordered to be expunged, then all records pertaining to a case, including the Chronological Case Summary, but with the exception for the order of expungement that is to be placed in the Confidential Record of Judgments and Orders, will be destroyed pursuant to the order of expungement. To replace the original Chronological Case Summary, a replacement CCS should be created containing only the case number, a statement that the case had been expunged, and the date that the order of expungement had been issued. To replace all orders concerning the expunged case in the Criminal Record of Judgments and Orders, a replacement page should be inserted containing only the case number, a statement that the case had been expunged, and the date that the order of expungement had been issued.

Q26. What is the purpose of the Attorney General's Address Confidentiality Program?

- A. The Address Confidentiality Program through the Office of the Attorney General has been established under IC 5-26.5, and a person, or a minor or incapacitated person for whom an application has been made, who has been a victim of domestic violence and who has a valid protective order may participate in this program. This program makes the Office of Attorney General an agent for the participant for purposes of service of process and receipt of mail.

Pursuant to IC 5-26.5-2-3(b), for purposes of the Indiana Access to Public Records Law (IC 5-14-3), *"the name, address, telephone number, and any other identifying information relating to the program participant are declared confidential."*

Q27. What are the clerk's duties concerning confidential materials in a Protection Order case?

- A. The duties of the clerk of court concerning the maintenance of a confidential file and the handling of the Confidential Form (confidential under IC 5-2-9-7) are outlined in IC 5-2-9-6(b). Under IC 5-2-9-6(b)(1), the clerk is to *"maintain a confidential file to secure any confidential information about a protected person designated on a uniform statewide form prescribed by the division of state court administration."*

Under IC 5-2-9-6(b)(2), the clerk of court is to provide a copy of the Confidential Form *"that accompanies the Indiana order to the following:*

(A) The sheriff of the Indiana county in which the order was issued.

(B) The law enforcement agency of the municipality, if any, in which the protected person resides.

(C) Any other sheriff or law enforcement agency designated in the Indiana order that has jurisdiction over the area in which a protected person may be located or protected."

The original of the Confidential Form filed by the petitioner or by the prosecuting attorney is to be placed in the confidential file that the clerk has established.

Q28. Must subpoenas be issued using light green paper?

- A. Yes, if the subpoena contains the address, phone number, dates of birth or other information that tends to explicitly identify a natural person who is a witness or victim in a criminal, domestic violence, stalking, sexual assault, juvenile or civil protection order case.

Under IC 5-2-9-6(c), sheriffs and law enforcement agencies, after receiving a copy of the Confidential Form from the clerk, are to establish a confidential file in their Protection Order Depositories in which the Confidential Form is to be kept.

A second item that will be placed in the confidential file will be the "Confidential Page" (page four) for a change of address of the Notice of Extension or Modification form. If either the petitioner's address or the respondent's address changes, then page four (4) of the form must be completed by the petitioner and filed with the clerk, and the clerk should place the original of this page in the confidential file. Please note, however, that the change of address page (page four) will only be completed and filed with the clerk if there is a change of address. The Confidential Page is confidential because it contains the address and the telephone number of the petitioner and an alternate telephone number and address for notification purposes.

If the Confidential Page is filed along with the rest of the Notice of Extension and Modification form, a copy of the Confidential Page will be sent to the Protection Order Depositories listed above along with the rest of the form. The original, as noted, is to be placed in the confidential file as required by IC 5-2-9-6(b)(1).

Q29. Should the petitioner's address and telephone number be placed on the CCS in a Protection Order case?

- A. Since the Chronological Case Summary in a protective order case is not confidential, it is recommended that the petitioner's address and telephone number should not be placed on the CCS form. Rather, it is recommended that the following information be used instead: *"The address and the telephone number of the petitioner are confidential pursuant to Administrative Rule 9 of the Supreme Court of Indiana."*

Q30. How should orders to seal records be treated regarding the RJO and the CCS?

- A. Orders to seal records are confidential, and they should be placed in the Confidential Record of Judgments and Orders. The case file, all orders and judgments concerning the case in the Records of Judgments and Orders, and the original Chronological Case Summary should be placed in a sealed evidence envelope. The sealed records are to be treated as confidential records, and access to the sealed records will be restricted until an order to unseal the records is given.

The original Chronological Case Summary is to be placed in the sealed evidence envelope with the other sealed records. To replace the original Chronological Case Summary, a replacement CCS should be created containing only the case number, a statement that the case had been ordered sealed, and the date that the order to seal the records of the case had been issued.

Except the order to seal the records, which is to be placed in the Confidential Record of Judgments and Orders, all orders and judgments pertaining to the case are to be placed in the sealed evidence envelope. To replace all orders and judgments pertaining to the sealed case found in the Records of Judgments and Orders, a replacement page should be inserted containing only the case number, a statement that the case had been ordered sealed, and the date that the order to seal the records of the case had been issued.

Appendix C – Citizen’s FAQ

Q1. What is the difference between records “not accessible for public access” and those that have been sealed under statutory authority?

A. Records sealed under statute are more secure because no one is entitled to view the records without court authorization. Records “not accessible for public access” are only secure from public access but may be viewed by court or clerk staff and the parties to the case and their lawyers.

Q2. Can I obtain the mailing address and phone number of a party to a case?

A. Yes, the mailing address and phone number of parties to a case is a record accessible to the general public unless a court order has been issued restricting access.

Q3. Can I obtain the mailing address and phone number of a witness or the judge handling a case?

A. No. These records are not accessible to the public.

Q4. I was adopted in this county. Can I review the adoption file to learn about my natural parents and the reasons for my adoption?

A. Information contained in court adoption files is generally excluded from public access by anyone including the person who was adopted. IC 31-19-24 provides a procedure to seek information related to an adoption and requires the filing of a written petition in a court with probate jurisdiction in the county where the adoption was granted.

Q5. As a victim of a crime can I obtain the pre-sentence report related to the offense committed against me?

A. Pre-sentence reports are confidential court records and are not accessible to the public.

Q6. Can I see an inheritance tax schedule or tax records to see if assets exist that may be transferred to a person against whom I have a judgment? What if the records were entered into evidence in a court proceeding?

A. Court orders determining inheritance tax due regarding a transfer of property to a beneficiary are confidential as required by IC-6-4.1-5-10 but the inheritance tax schedule filed by the personal representative is not. Copies of the tax determination order must be sent to each beneficiary plus any other person who has filed for receipt of notice of court proceedings under IC-6-4.1-5-3.

Evidence presented in court proceedings is not confidential and may be reviewed unless an order has been entered prohibiting public access.

Q7. Are my case records available to the public?

- A. All information contained in case records is accessible by the public unless declared confidential by Administrative Rule 9(G) unless a person affected by release of the information has sought or obtained an order prohibiting public access pursuant to Administrative Rule 9(H).

Q8. I want to handle my case without an attorney. What should I know about filing documents with the court?

- A. You are subject to the same standards and requirements as an attorney and must comply with the filing requirements of Administrative Rule 9 related to providing confidential information.

Q9. Are all court records available through the Internet?

- A. No. At this point very few courts have the ability to provide all records through the internet. In most instances information must be obtained directly from the court or the court clerk offices.

Appendix D – Judge and Court Staff FAQ

Q1. Is a recording of a court proceeding made by a court reporter a public record? If so, does the public have the right to come and listen to the recording as opposed to acquiring a transcript? Would they be entitled to make their own copy of the recording?

A. Recordings of court proceedings made by court reporters are public records regardless of whether they are produced on magnetic recording tape, compact disk, stenotype, shorthand or digitally recorded upon a computer hard drive, unless the specific case type is confidential under Administrative Rule 9. The public has the right to obtain the record within a reasonable period of time after making the request.

A specific means of providing this type of record has not been defined but the time or difficulty of compliance is an important consideration. Allowing the requestor to listen to the recording may be too time consuming to be reasonable for the reporter or a court staff member since the custody and integrity of the original must be continuously maintained.

Providing a copy of the record is probably the most efficient and least time consuming method to provide public access. A reasonable charge for the production of the copy may be made and guidance on this issue may be found in IC-5-14-3-8. Under no circumstances should the original be provided to the requestor in order for them to create their own copy.

Requiring the purchase of a transcript would in many cases be so costly as to constitute a denial of access to the public record unless the requestor desires to obtain the record in that format. Given the time required to produce a transcript and the other duties of reporters, the reasonable time for producing the record may well lead the requestor to ask for a different format. If the case is on appeal a copy of the transcript could be obtained from the Clerk upon its completion and filing.

Q2. Are exhibits offered and/or introduced into evidence in a court proceeding public records? If so, must their review of them be supervised or may copies be created at their cost?

A. Once identified and offered or admitted into evidence all exhibits are part of the public record. If a review of the original is granted, the reporter or staff member should supervise because of their duty to maintain the custody and integrity of the exhibit.

The size, nature and extent of the exhibit will have a significant impact upon the time required by the reporter or staff member to allow their reading or viewing. The constraints of time also impact the reasonable time of and nature of the response. In

many instances the production of copies of large documents at a reasonable charge will be the most efficient manner of responding to the request.

Q3. Are documents that are prepared in the normal course of court administration and that may be used for personnel or administrative purposes public records?

- A. All administrative records produced by the court are public except for those listed in Administrative Rule 9(G)(2). Section (2)(b)(vi) deals specifically with personnel records.

Q4. Are juror questionnaires and the responses supplied by prospective jurors public records?

- A. Pursuant to Administrative Rule 9(G)(b)(xii) and Jury Rule 10 personal information contained in juror questionnaires is confidential except for the use of the parties and counsel unless the information is disclosed in open court. Otherwise juror questionnaires and the responses of prospective jurors are public records.

Q5. What if the parties waive their rights of confidentiality by filing documents containing information that would be confidential?

- A. Under Administrative Rule 9 no party has the right to file a document containing information concerning themselves or third parties deemed confidential under the rule unless they adhere to the requirements of the rule concerning how the information is to be presented.

Q6. Can the parties waive confidentiality and avoid the filing requirements of Administrative Rule 9 or authorize the release of information?

- A. Administrative Rule 9 does not contain a provision for a waiver of confidentiality except as stated in section G (3) which allows the release of (previously provided) information if it is released by all parties to whom it pertains. Parties must tender all information excluded from public access in the manner required by the rule.

Q7. Pro se litigation is increasing with the prospect that confidential information will be included in documents filed with the court. Is the court required to examine these documents for compliance with Administrative Rule 9?

- A. The responsibility for compliance with Administrative Rule 9 concerning filed documents rests upon the party filing the document. A court is not required to screen documents presented for filing. Section 9(L) provides immunity for unintentional or unknowing disclosure of confidential material. Since the Bar and public must be educated about the requirements of the rule and those that implement it, it would be a good idea to require the Clerk to provide information concerning confidentiality requirements to those who want to initiate a case.

Q8. Is it not futile to make court records confidential since parties often must present the information to other offices to transact business and those offices will not or cannot keep the information confidential?

A. We can only control the information that comes into our systems but it is better that we reduce the access to sensitive information than to add to the number of sources from which the information can be inappropriately obtained.

Q9. Where do judges go when they have questions about issues arising from Administrative Rule 9?

A. Contact the Office of State Court Administration (317-232-2542) for assistance in dealing with the issue.

Q10. What is the reasonable cost for providing information requested?

A. Standards already exist with respect to the reasonable cost of providing copies of documents by public offices but do not specifically apply to the judicial branch of government. See IC-5-14-3-8.

Courts should adopt fee structure substantially in conformance with those authorized by existing statutes.

Q11. How do we handle questions that ask for more research information about the time cases take to finish, etc.?

A. This really presents a public relations question rather than a question concerning access to public information under Administrative Rule 9. Offices are not required to create a special report to respond to any inquiry or reconfigure things to provide information that is not otherwise created or retained in the ordinary course of the business of the office.

Q12. What do we do with scandalous materials contained in a pleading even if it is true?

A. Unless information contained in a pleading is defined as confidential under Administrative Rule 9 it does not have to be treated in a confidential manner.

Q13. Is information contained in the cover page of a protective order confidential?

A. Administrative Rule 9 defines the information that is confidential and the information that is not. It is important to remember that the identifying information can still be sent to law enforcement.

Q14. Are bank account numbers and Social Security Numbers on supplemental proceedings and warrants confidential?

- A. Information entered into evidence in open court is not confidential and, therefore, accessible to the public.

Q15. How do we deal with the need to put specific account numbers and dollar amounts in an order?

- A. The recent amendment to Trial Rule 58 requires orders to have confidential information put on separate confidential pages.

Q16. How do we handle the volume of confidential information that will arise in certain types of cases; e.g. small claims cases, and create a burden on staff and courts?

- A. Administrative Rule 9 does not create a “one-size fits all” approach. Each county will have its own opportunity to determine the best and most efficient manner to implement the rule and handle confidential information within the general requirements of the rule.

Q17. Does Administrative Rule 9 place a burden on the media or others if they come into possession of materials that should be part of the sealed record?

- A. No. Issues such as this would likely have to be handled on a case-by-case hearing basis and would be very dependant upon the position taken, if any, by the person or entity whose information was obtained.

Q18. What can be done if pleadings are filed that are in violation of Administrative Rule 9?

- A. The Clerk as the recipient of the pleading offered for filing that does not comply has the first opportunity to address the issue and would be justified in declining to accept the document. Alternatively, the Clerk could immediately treat the document as confidential and provide it to the Court for further action.

Upon examination by the Court an order could be entered impounding the document and ordering the offending party to promptly tender a document in compliance with the rule. A failure to comply could result in the striking of the document from the record or another suitable sanction. (See Form A-5).

Q19. How do you handle exhibits containing inappropriate materials?

- A. Administrative Rule 9 does not make any explicit exception for exhibits. However, there is some thought that there is a difference between evidentiary exhibits and exhibits attached to pleadings that may be filed. Although an additional amendment to Administrative Rule 9 is probably necessary to clarify this point, there was a consensus of the Task Force that information contained in exhibits admitted in evidence in an open court proceeding would not require redaction and would be part of the publicly accessible case file. Similarly, there was a consensus of the Task Force that transcripts or audio

recordings of proceedings in which exhibits or testimony reveals information that would otherwise be non-public should be part of the public case file and not require redaction. In contrast to evidence introduced in a public proceeding, documentary attachments to pleadings containing confidential information must comply with the requirements of Administrative Rule 9. In the event that an individual or entity wishes to make evidence introduced in a public proceeding non-public, the burden is upon that person or entity whose information will be disclosed to seek entry of an order prohibiting access under Administrative Rule 9(H). Until such time as the rule is modified, it is necessary to follow the requirements of the rule as written.